Montana Planning News

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MONTANA Planning Newsletter

LAND USE PLANNING SERIES

February, 1976

"Planners and Golf"

There is a school of thought that insists no planning worthy of the name can be or should be done until "all the facts are known." To the sociologist this means that attitudinal types must be identified and analyzed, the power structure described and gauged, and the potential impacts of cultures and sub-cultures weighed and evaluated. The physical scientists must catalog all there is to know about rocks and soils, water, weather and air, and the life scientists inventory all life forms from microbes to mammals, as well as the plant life on which, in which, or from which they live. The economists and political scientists must contribute to the inventory and analysis, as well as all the others with special knowledge about the interaction of mankind with his physical and social environment, past and present. At least one representative of this school has proposed simply that before any planning in Montana is attempted, a study must be made to determine the effects of all systems on all other systems, regardless of the cost.

Of course no one is going to deny that all knowledge about all things (if indeed you could get it) would be a handy thing to have before planners sat down to plan. But let me suggest an analogy. If, one Saturday morning as a member of a foursome on a public golf course, I am about to attempt a 30-foot putt, it could be argued that before addressing the ball I should first gather all the data and carefully analyze them. I should find the spherical aberration of the ball; its mass and resiliency; the wind direction and velocity at ground level; the moisture content and frictional resistance of the grass and soil; the flatness of the putter; the grain of the grass; the slope or slopes of the green along the path of the ball; and of course the precise distances along each of the possible routes to the cup. The data combined in a mathematical equation would yield the precise direction to hit the ball and the energy in foot-ounces to apply.

Now naturally anyone undertaking such a project would be hustled off the golf course by the management before he could get his instruments set up. What any golfer does instead is try to estimate the cumulative effect of some of the above variables, ignore others, and then with all the skill and control he can muster, putt the ball in a certain direction with a certain force. He will usually miss. But meticulous measurement of the variables would add little to his chances of a one-putt, because his ability to control the force and direction of the putter stroke is not precise enough for him to make use of all the extra data.

Something the same, I suspect, is true of plans and planners. Good golfers (and even poor ones) with no more research than a careful look at the situation, and conscientious

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planners have made feasible plans without in-depth studies of power structures, personality types, and a full catalog of everything above, on and under the earth. To be sure, perfect putts and perfect plans are quite rare. Most 30-foot lies take two strokes or more to hole out, and likewise most plans have to be modified one or more times to make them workable.

Unfortunately for those who want to get on with the game, all too many golfers go through a ritual of testing the wind, squinting at the hole from all angles, brushing invisible motes from the green, cleansing the ball, posturing and practicing that adds not a whit to their accuracy. Similarly, some "comprehensive" planners have substituted fancy footwork for skill and included pages of background filler that added little to understanding and were probably not consciously used at all in the final plan or its implementation.

All plans could benefit from more usable information if time and money were of no consequence. But the subtle interrelationships of all systems are so dimly understood under the present state of the art that even if the extraordinary team could be assembled to come up with definitive answers, few budgets could support them. And to insist that nothing can be accomplished without the panoply of a full-scale, damn-the-cost investigation of everything, would mean that no planning at all is possible until the coming of the millenium. Planners, like golfers, can't wait that long.

C.R. Draper

UMTA CONGRATULATES MONTANA

Governor Thomas L. Judge recently received a telegram from the Urban Mass Transportation Administration in Washington, D.C., congratulating Montana and the 13 private non-profit organizations in the state for being first in the nation to use transportation vehicles to serve the elderly and handicapped.

COUNTY PLANNING FUNDS DISTRIBUTED

The first quarter's revenue from the county planning fund, established under Senate Bill 87, which imposes a severance tax on coal mined in Montana, was distributed in January among the state's 56 counties. Individual payments to counties, based on a formula of 40% geographical area and 60% population, ranged from $5,746 to $246, with total distribution amounting to $68,481.36.

SB 87 specifies that the county planning funds be spent for conducting land inventories and classifying lands for taxation and planning programs. At the end of each fiscal year any surplus money from the county planning funds reverts to the state educational trust fund. County officials need to carefully budget and account for the funds in order to demonstrate how much of the funds were spent and to assure they were spent for eligible costs.

PROPOSED CHANGES TO ADMINISTRATIVE RULES

The Division of Planning recently distributed copies of proposed changes to the Uniform Standards for Preparation of Certificates of Survey and Final Subdivision Plats. The proposals were filed the 15th of February with the Secretary of State in accordance with the Administrative Procedure Act. A public hearing will be held March 5, 1976 in the Highway Department Auditorium in Helena at 1:30 p.m.

Most of the changes were suggested by the Montana Association of Registered Land Surveyors. The Planning Division is using this opportunity to air a different approach to alleviating abuse of the "occasional sale" exemption. The proposed change would prohibit the use of an occasional sale exemption if the remainder created by the occasional sale would also be less than 20 acres in size. If use of the occasional sale would result in two parcels each less than 20 acres, the division would have to be treated as a subdivision and the parcels reviewed and approved.

DCA believes this proposal would more accurately reflect the department's interpretation that the legislature intended the occasional sale exemption to be used to create one parcel less than 20 acres from a large tract without subdivision review and approval, and that if two or more parcels were to be created, they should be subject to review and approval.

Copies of the proposed changes may be obtained from the DCA Division of Planning. The staff urges your comments and reactions

both at the public hearing and any time up to March 15th.

PUBLIC HEARINGS: MELDA-HOUSE BILL 672

On November 6, 1975, DCA held a public hearing in Helena to consider the adoption of rules to implement section 84-7526 of the Montana Economic Land Development Act (MELDA-HB672). That section provides that as of January 1, 1976, land zoned within cities was to be assessed in accordance with MELDA. As a result of testimony presented at the hearing, DCA has decided to defer adoption of any rules at least until the Department of Revenue adopts its own MELDA rules. Also, DCA has requested clarification of section 84-7526 by Attorney General Robert L. Woodahl, and will not adopt rules until it receives a response from Mr. Woodahl's office.

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On February 18, 1976, the Department of Revenue held a public hearing on rules proposed by it to implement MELDA. Only two persons testified at the poorly-attended hearing. Hearing Officer, Dennis Burr, announced that the hearing record would remain open for written comments for 30 days. No action will be taken on the rules before the expiration of that period, he said. Copies of the Department of Revenue's proposed rules may be obtained from the Property Taxation Division, Capitol P.O., Helena 59601.

LEGAL BRIEFS

In an opinion issued on January 20, 1976, (Vol. 36, OP. No. 51) Attorney General Robert Woodahl stated that the filing of a subdivision plat does not, by itself, justify the reclassification of land from "agricultural" to "residential" for taxation purposes.

The Attorney General noted that land must be classified according to its present use and that land may continue in agricultural production even though a subdivision plat for it has been filed with the clerk and recorder. He concluded that if the use of the land meets statutory criteria for agricultural production (section 84-437.2, R.C.M., 1947) the filing of a subdivision plat can have no effect on the property's classification or tax assessment.

This interpretation destroys any deterent effect that Montana's so-called "Greenbelt Act" (sections 84-437.1 through 84-437.17, R.C.M., 1947) might otherwise have on the premature subdivision of agricultural land. This Act provides that agricultural land, unlike other real property, is to be taxed not according to its market value, which may be inflated by development pressures, but according to its value for agricultural purposes. The Act also penalizes the conversion of agricultural land to non-agricultural uses by imposing a "roll back" tax at the time of the use change. This penalty tax is equal to the difference between the taxes paid on the property during the four years preceding the conversion and the taxes which would have been paid if the property had been taxed according to its higher market during this four-year period.

If, as the Attorney General has held, the filing of a subdivision plat does not constitute a change of use, the purchaser who builds on a lot, and not the subdivider who has set the stage for the change in land use, will find himself liable for the roll back tax. Furthermore, because this tax penalty would not be reflected in the price of lots, it would not influence the marketability of the lots.

Further discussion of the "Greenbelt Act" is contained in Differential Taxation and Agricultural Land Use published by the Planning Division and available for 50 cents per copy.

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The Planning Division has filed an amicus curiae (friend of the court) brief with the Montana Supreme Court in the appeal of a controversial district court decision concerning the review of subdivisions by the State Department of Health and Environmental Sciences.

In this decision, First Judicial District Judge Gordon R. Bennett ruled in Helena that the Health Department's environmental impact statement for the Beaver Creek South subdivision, to be located in the Gallatin Canyon, did not comply with the requirements of the Montana Environmental Policy Act.

Consequently, Judge Bennett ordered the Department to revoke its approval of the

subdivision's plans for water supply and sewage and solid waste disposal under the "sanitation in subdivisions act" (sections 69-5001 through 69-5009, R.C.M., 1947). The Department and the developer have appealed this ruling.

The Planning Division believes that if sustained, the District Court's decision will result in a major shift in the responsibility for comprehensive subdivision regulation from local governing bodies to the Department.

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In State ex rel. Thelen v. City of Missoula (Dec. 8, 1975) the Montana Supreme Court held that the legislature may limit the power of local governments to adopt zoning regulations.

In this case the Thelens intended to sell their Missoula residence to a non-profit organization for use as a group home for developmentally disabled persons; however, the property was located in a neighborhood in which group homes were prohibited by local zoning.

Sections 11-2702.1 and 11-2702.2, R.C.M., 1947, which were originally adopted in 1973, expressly exempt the location of group homes from regulation under municipal zoning, but the city challenged the validity of these sections and sought to prohibit the use of the Thelens' property for this purpose.

In ruling that the city could not use its zoning ordinance to prevent the establishment of group homes, the Court cited the long recognized principle that municipalities have only those powers granted to them by statute (or by necessary inference therefrom) and that the legislature may modify or withdraw these powers at its discretion.

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In State ex rel. Christian, Spring, Sielbach & Assoc. v Miller (33 St. Rep. 168, Feb. 4, 1976) the Montana Supreme Court has affirmed its earlier ruling that county interim zoning authorized by section 16-4711, R.C.M., 1947, is subject to the notice and hearing requirements of section 16-4705. In Christian the Court held that a 90-day subdivision moratorium adopted by the Powell County Commissioners in June of 1974 was invalid because the commissioners did not comply with the requirements of section 16-4705.

The Court first adopted this position regarding interim zoning in Bryant Development Assoc. v. Ted Dagel et al., ____ Mont. ____, 531 P2d 1320, 32 St. Rep. 213.

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Attorney General Robert L. Woodahl has issued an opinion (Vol. 36, Op. No. 33) that under Chapter 47 of Title 16, R.C.M., 1947 (authorization for county zoning) county commissioners may impose zoning regulations on patented mining claims. The Attorney General noted, however, that these regulations may not prevent the owner of any mineral, forest, or agricultural resources from use, development, or recovery of those resources (section 16-4710, R.C.M., 1947).

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